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From:

Sent: Monday, November 28, 2011 4:42:11 PM

To:

Cc:

Subject: Request for Advice

You asked our office to provide advice regarding whether a revenue officer has authority to contract with a landlord to rent a building in which the taxpayer's personal property to be seized is located for a period preceding the actual seizure.

IRC 6341 authorizes the Secretary to determine allowable expenses of levy and sale. Treasury Regulation 301.6341-1 states that such expenses "include the expenses of protection and preservation of the property during the period subsequent to the levy, as well as the actual expenses incurred in connection with the sale thereof." IRM 5.17.3.6.5.1 states that the "expenses of levy and sale include expenses or liabilities incurred to protect and preserve property during the period following service of a levy (insurance, police and private guards, custodial or maintenance help, rent or storage, utilities, trucking, etc.) as well as actual expenses incurred in connection with the sale." These authorities establish that expenses of levy can only be generated following service of levy.

The ICS History Transcript you provided indicates that the notice of levy was not provided until September 7, 2011. Thus, despite the revenue officer's oral agreement with the landlord to rent the space for the period prior to providing the notice of levy and seizing the property, he lacks authority to make such an agreement because that pre-levy rent is not an expense of sale contemplated by 6341 and the accompanying regulations.

Please let me know if you have any questions or would like to further discuss this matter. Thanks.